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Mon Dec 21 00:00:00 EST 2009	3:33 PM	2156924383	2672185232 Received
Tue Dec 22 00:00:00 EST 2009	9:53 AM	2156924383	2672185232 Received

cconnor@ccplegal.com

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**From:** Smith, Annette <[REDACTED]>  
**Sent:** Thursday, December 31, 2009 11:27 AM  
**To:** Clymer, Ryan  
**Cc:** Smith, Kevin R.  
**Subject:** Follow up information  
**Attachments:** Emily Mayer Documentation 2009.doc  
**Importance:** High

Ryan:

Hope your holidays were good. I wanted to follow up on the Voicemail I sent you and include the document which I told you we had Emily write out some of the information she indicated verbally.

This document was written on Monday, Dec 21<sup>st</sup> when Emily came home early from school after having talked to you. Kevin asked her to sit down and document some of the content of the txt messages and some of the key text's that she could remember that were fresh in her mind.

I also had referenced Robin Landis in the voicemail I left for you. Ashley Makowski had relayed to Emily on Wed the 30<sup>th</sup>, that Robin had been talking to the girls and questioning whether they believed Emily. If they stated that they did, she then challenged them as to why they believed her and that Emily doesn't know the character of the coach. Additionally, Robin stated that perhaps the coach sent them to Emily by mistake intending them for his wife.

These purported actions by Robin concern me as the girls are supposed to be talking to Mr. Hollenbach on Saturday. If they are being challenged by Robin and Emily is being maligned, this will affect the information being gathered. The truth needs to prevail without influence one way or the other.

Please keep me advised of the situation.

Thank you,

Annette

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Emily Mayer Statements

Beginning of November he started telling me how he and Lauren did sexual things, and was hinting at me to be this way.

December 5<sup>th</sup> - Desales game he texted me and said "I want to be in you"

This month- he would just tell me every day he was in love with me.

He would tell me he could give me everything that I need and he has so much to offer me and wants to marry me.

He wanted me to pick between him and Chase. Said he hated my picture on my cell phone and told me to delete it.

He told me he would leave the house just to text me, because he had to hide it.

Coach said he stayed in his bath room for a long periods of time to text me.

December 17<sup>th</sup>. Coach texted me after the game. Just so you know next Tuesday I am going to tell them that I resign, I said why and he said that he can't be friends with me and has to quit because it kills him to see me.

He would forward text messages he said were between he and Lauren Fretz and asked if I was jealous.

Coach told me he liked being on the Quakertown school bus with his team because they would change in front of him. (text message was more recent)

Late night text messages unreturned by me because I feel asleep he would respond with a text full of ????????????????

I would leave my cell phone in the locker during classes and come out to many text messages from coach.

**IN THE MATTER OF ARBITRATION BETWEEN**

Pennridge Education Association

the Union

- and -

Pennridge School District

the Employer

Grievance: The Discharge of Mark Ludlow

Opinion

and

Award

**APPEARANCES**

For the Union

Charles L. Herring, Esquire  
PSEA  
Legal Division  
1005 Penllyn Pike  
Ambler, PA 19002

For the Employer

Joanne D. Sommer, Esquire  
Jeffrey L. Finley, Esquire  
Eastburn & Gray, P.C.  
60 East Court Street  
P.O. Box 1389  
Doylestown, PA 18901-4350

**BEFORE**

Margaret R. Brogan, Esquire  
Arbitrator



This case presents the issue of whether the School District had just cause to terminate the grievant, teacher Mark Ludlow, for alleged misconduct, including inappropriate touching of female students, during the 1999-2000 school year.

Hearings were held in this matter on March 21, 2001, April 9, 2001, April 25, 2001, May 29, 2001, June 15, 2001, August 22, 2001 and August 29, 2001.

Briefs were filed by both parties as of December 1, 2001. A supplemental brief was filed by the Employer on December 10, 2001, which was received by the undersigned, and considered with respect to the following decision, over the objection of the Union.

At hearing, the parties stipulated to the following issue:

#### ISSUE

Whether the School District had just cause to discharge the grievant, Mark Ludlow, and if not, what shall be the remedy?

#### FACTS

##### Background

Mark Ludlow, the grievant, was a full-time contract teacher at the Pennridge High School from 1995. Prior to that time, the grievant had taught for the Pennridge School District during the 1990-1991 and 1992-1993 school years, and had taught as a substitute for various school districts, including Pennridge from 1993-1995. (T. 1131; 1137) Pursuant to the Notice of Termination of March 6, 2000, the grievant was informed that he was being terminated for charges

against him, including immorality, persistent and willful violations of the school laws of the Commonwealth, including official directives and policy of the Board of School Directors, and failure to comply with the school laws of the Commonwealth, including official directives and policy of the Board of School Directors of the District. The basis for the charges was that the grievant allegedly violated the District policy against student harassment. Specifically, it is alleged that "the first instances of harassment reported to the Administration occurred in the beginning of the 1999/2000 school year," wherein "female students reported that you touched them inappropriately." It is alleged that the grievant "did not comply with the directive of [Principal Creeden] issued in October 1999 after investigation of the first harassment complaint." It is alleged that the grievant "engaged in activities construed as retaliatory and met alone with female students." It is alleged that, "in addition, you continued the same type of inappropriate physical contact with other female students that cause them to file a complaint of harassment in January 2000." The grievant is also charged with "fail[ing] to comply with Mr. Creeden's directive regarding the discussion of sexual topics within the classroom setting;" and "fail[ing] to comply with the directive to return a copy of the mid-term examination to Mr. Creeden or your department chair." (JX 3)

Mr. Ludlow was criminally charged based upon the claims of inappropriate touching which formed the basis of the grievant's discharge. Criminal hearings, before a jury, were conducted on January 4, 2001, January 5, 2001, and January 9, 2001. The grievant was acquitted of all criminal charges. Some witnesses

who testified at the arbitration hearings also testified at the criminal trial. The trial transcript was received into evidence at the arbitration. (JX 5) The parties stipulated that Susan Cosminski and Margeaux Hancock, if called to testify at arbitration, would testify consistently with their trial testimony. (T. 1284) The remaining trial testimony was not taken for the truth of the matter, but could reflect either a prior consistent or inconsistent statement of witnesses who did appear and testify at arbitration. (T. 1415)

Boiled down, the alleged conduct at issue involves inappropriate touching by the grievant of female students, Rebecca Albritton, Jenna Merlo, and Katherine (Katie) Schneider, in the classroom, during the 1999-2000 school year, as well as alleged inappropriate classroom discussions of a sexual nature during the same time frame. The allegations made by the girls were that the grievant cupped, brushed, and massaged their breasts, in the classroom, while handing back tests, and at other times while class was in session. The alleged inappropriate lectures involved a discussion of whether Betsy Ross was a prostitute, the topic of the grievant's father's difficulties in performing a bowel movement while disabled, a discussion of the childbearing difficulties of the grievant's wife, and a reference to an alleged affair between the grievant and his college professor. The grievant was also faulted for certain possible answers he included in tests he prepared.

#### The classroom setting

During the 1999-2000 school year, the grievant taught one remedial 19<sup>th</sup> century U.S. History class, three college-preparatory American Cultures classes,



which was a study of 20<sup>th</sup> century history; and one sociology class. Ms. Albritton and Ms. Merlo were in the grievant's remedial U.S. History class, while Ms. Schneider was in one of the grievant's college-preparatory American Cultures classes. (T. 1136-1137; 1391-1392) There were approximately 13 students in the Albritton-Merlo class, and 32 students in the Schneider class. (AXs 15, 16, 17)

The High School is divided into three buildings, the Freshman Center, the Upper House, and the Lower House. Mr. Ludlow taught the classes in issue in the Upper House in Room 402-D, which was not a traditional classroom, but part of a POD system. The room had no door, but instead had an approximate six foot opening. There was a permanent divider between the grievant's room and the next room, with a window in that divider. One could see into the next classroom through that window. (T. 63-66; 1143-1148; AX 14)

#### The grievant's teaching style

Testimony confirmed that the grievant generally taught from the front of the classroom, at a podium, or seated backward at an empty student desk at the front of the room, although he would walk around the room to answer questions. Students book bags were placed in the aisles near desks which impeded his movement. Tests were given approximately every three weeks. The grievant handed out tests by giving the appropriate number for the whole row to the student seated in the first seat of the row, to pass back. Students taking the test could ask questions, and the grievant would come to the student, bend or kneel down near the student, and answer the question. The grievant personally

handed tests back to students. Other papers, including quizzes, were not personally handed to the students by the grievant, but were passed down the rows. The grievant also came to student desks to assist them with seat work. (T. 887-940; 954-1012)

The grievant acknowledges that he had a habit of shaking a student's hand, or patting them on the back or shoulders, to congratulate performance. The grievant also testified that he spoke very closely to students while answering test questions, so as not to disturb the test-taking of the other students. In so doing, the grievant admitted that he might have gotten close enough to students so that his moustache grazed their faces. According to Mr. Ludlow, any touching of the students, in either handing back papers, or in speaking in close proximity to students was inadvertent. (T. 1130-1244)

#### The District's Sexual Harassment Policy

The District has a sexual harassment policy which applies to both professional employees and students. The policy indicates that "examples of sexual harassment include, but are not limited to sexual flirtations, advances, touching or propositions...graphic or suggestive comments about an individual's dress or body...references to sexual activities; overt sexual conduct, or any such conduct that has the effect of unreasonably interfering an employee's [or student's] ability to work or which creates an intimidating, hostile or offensive learning or working environment. The policy further provides that "The Board directs that complaints of harassment will be investigated promptly, thoroughly



and impartially and that corrective action be taken immediately when allegations are verified." (SDX 17)

The allegations of Rebecca Albritton

Ms. Albritton, who at the time was a sophomore, was in the remedial history class, the first class in which she had the grievant as a teacher. She needed the remedial class as she had missed school in the prior year due to an eating disorder. Ms. Albritton had been tutored over the prior summer as to missed school work, and completed all work except that in U.S. History. Ms. Albritton characterized herself as an A/B student, C being a bad grade for her. At the time of the allegations, Ms. Albritton had a C in Mr. Ludlow's class in the first marking period, and a B in the second marking period. (T. 58-60; 142; 1171-1173; AX 16)

Ms. Albritton sat in the front seat of the right row, next to the wall. Jenna Merlo sat to her left. Students sat in any desk they wished on the first day of class, and were generally assigned those seats during the semester. Desks were a few inches from another desk in the row. Ms. Albritton testified that prior to that school year she and Ms. Merlo were not social friends, that Ms. Merlo was not "somebody that I really wanted to know." (T. 68-70)

Ms. Albritton testified that beginning the second week into the school year, the grievant began to "place his hands" upon her. Specifically, she testified that, "He would be walking down the rows, he would rub my shoulders, massage my shoulders, he would caress my back. And not only my back, but he would have his hand where my back bra strap clasped and I would feel his hand moving

around there. And this went on every time he would come near me." Ms. Albritton further testified that by caress, she meant that "he would move his hand in a constant motion and rub with his fingers." (T. 74-75) Ms. Albritton described the grievant as an extremely "touchy-feely" teacher, and stated that his behavior made her frightened and scared. (T. 77)

Ms. Albritton testified that the grievant touched her breast by sliding his hand across her breast when he would pass her, or when he would use her pencil to show her something. (T. 78-80) She testified that at first she believed it was accidental, but the brushing across her breast began to happen "every time he passed me," and "it felt like it was every single day." Ms. Albritton testified that the caressing of her back occurred "every other day, every couple of days." Counsel for the District conducted a visual demonstration of the alleged massaging of the back and shoulders, and touching of the breast, with the arbitrator sitting in the desk behind counsel acting as "student." (T. 82-84)

Ms. Albritton testified that in early-mid October, in class, the grievant took his entire hand and squeezed her breast. According to Ms. Albritton, when it occurred, she "froze," had a shocked look on her face, and she turned and made eye contact with Ms. Merlo. Ms. Albritton testified that she said to Ms. Merlo, "Did you see that?" and Ms. Merlo replied, "Yeah, me too." (T. 84-85)

Ms. Albritton testified that, prior to this, she had not complained to her parents or others because she didn't want anything to happen to Mr. Ludlow. She did not say anything verbally to him, cry out, or move her seat, but she began to move away as he came close to her, or she cut class to avoid him.

According to Ms. Albritton, when he squeezed her breast in October, she believed it wasn't a mistake anymore. (T. 87-88)

Ms. Albritton then asked Ms. Merlo if she would go with her to talk to her guidance counselor, Audrey Graybill, which they did after class. Together, the girls met with the counselor and told Ms. Graybill about the conduct as if it happened to a third person, asking if the behavior was wrong. Ms. Graybill told them to go home and tell their parents. (T. 91-95)

Ms. Albritton testified that, that evening, she told her mother and father about the conduct, and told them that she didn't want to do anything to Mr. Ludlow, that she didn't want her name to be used, and that she just wanted the conduct to stop. (T. 95-97)

The next day, Ms. Albritton went to school accompanied by her mother, where they met Ms. Merlo in the guidance office. The three spoke together to Ms. Graybill, and then went to see Principal Creeden. Ms. Albritton, her mother, Ms. Merlo, and Ms. Graybill then met together with Mr. Creeden. According to Ms. Albritton, she told Mr. Creeden, in the presence of the others, about the inappropriate touchings by the grievant, but she didn't get into as much detail as she did in her arbitral testimony. (T. 98-99) Ms. Albritton was not interviewed alone, nor did she give a written statement while at school. Rather, she was told by Mr. Creeden to provide a statement at a later time. Ms. Albritton testified that sometime later she wrote a statement, at home in her room, while she was alone. In the statement, Ms. Albritton indicates that "on several occasions, my history teacher, Mr. Ludlow has invaded my personal space." She describes the



incident where Ms. Merlo and she made eye contact, as a situation where the grievant was passing out a paper, reached to pat her for a "good job", missed her shoulder and "patted my left breast." She goes on to say that "that type of grabbing/patting has happened more than once." Ms. Albritton describes the grievant leaning against her with his body to answer her question, and that his hand "always" brushes her chest in this context. She further complains of his rubbing her back. (T. 103-105; SDX 1)

When Ms. Albritton met with Mr. Creeden, her mother and others, options were discussed, including moving Ms. Albritton to another classroom for U.S. history. Ms. Albritton told them she did not want to move because the only other U.S. History class met in the Freshman Center, which would have meant that she had to walk back and forth between there and the Upper House for other classes. She also did not want to leave the class because it would draw attention to herself, leading Mr. Ludlow and other students to assume she had made the complaint. Ms. Albritton told Mr. Creeden that she did not want her name mentioned, that she wanted the behavior to stop. Mr. Creeden told her that he would talk to Mr. Ludlow about what she and Ms. Merlo had said, that a letter would be put in his file, and that their names would not be used. (T. 99-101)

Ms. Albritton testified that on the next class meeting with Mr. Ludlow, he had a discussion in class about due process, in which he stated that if he had been accused of a crime, that he had a right to know his accusers. According to Ms. Albritton, he looked at her and Ms. Merlo as he said this. Ms. Albritton testified that the topic had nothing to do with the class lesson. (T. 105-108)

According to Ms. Albritton, the touching by Mr. Ludlow stopped for about a week or two, and then started again, in the same manner and in the same frequency as before. Ms. Albritton testified that she told no one about this resumption of inappropriate touching, because she was afraid Mr. Ludlow would be fired. (T. 108-110)

Ms. Albritton testified that, after her initial complaint, the grievant engaged in other inappropriate conduct. She describes a day in class in which she was asking his advice about college, the bell rang, and she found herself alone with the grievant. Ms. Albritton testified that the grievant sat across from her with his hand on her thigh as he spoke to her. Ms. Albritton testified she moved to get away from him. Ms. Albritton testified that on another occasion near the holidays, the grievant embraced her in class, holding her close so she could feel his erection. (T. 110-114) Margeaux Hancock, whose criminal trial testimony was taken for the truth pursuant to the stipulation of the parties, testified that Mr. Ludlow hugged her and, she believed, also Ms. Albritton, right before Christmas break. Ms. Hancock described the grievant's hug as tight. (JX 5; 1/9/01 at 127)

Ms. Albritton testified about topics in Mr. Ludlow's class that she found offensive. According to Ms. Albritton, the grievant told the class that his father was paralyzed, and his mother had to use her fingers to stimulate a bowel movement. She testified that the grievant also described his wife's labor and labor pains, and that her "legs had to be up and spread open in stirrups for her to have a child." According to Ms. Albritton, Mr. Ludlow told the class that "Betsy Ross was a whore, and slept with our Nation's forefathers." (T. 115-119)



On cross-examination, Ms. Albritton acknowledged that she kept a diary at the time, but wrote nothing in it about the alleged touching by Mr. Ludlow. Ms. Albritton testified that she could not identify any specific date that she was touched by Mr. Ludlow. She testified that she was unclear about which students were in the class, as many people dropped out of the class. (T. 136-138)

At the criminal trial, Ms. Albritton testified that the breast touching only occurred while she was at her desk, and only when the grievant was handing back exams. (JX 5 at 46) Ms. Albritton testified that in the incident where the grievant squeezed her breast, he did so for five seconds. (JX 5 at 47-48) As to the incident involving the hug, Ms. Albritton testified that "I felt his waist up against me. Whether or not I felt his genitals, I don't know." (JX 5 at 11);

Ms. Albritton testified that she has met with counsel for the School District, in preparation for her testimony, in the presence of her parents, Katie Schneider, and Ms. Schneider's mother. According to Ms. Albritton, she did not meet alone with counsel, prior to her arbitral testimony. (T. 170-172)

After the grievant was suspended in January, 2000, Ms. Albritton, Ms. Merlo, and Ms. Schneider went to counseling together, once a week, during school time, to speak about the Ludlow matter, up until the time of the arbitration hearings, although Ms. Merlo stopped in February, 2001, as she left to go to another school. The counseling sessions were set up school officials. (T. 159-160; 344; 460-461; 468; 750)

The allegations of Jenna Merlo

Jenna Merlo was in Mr. Ludlow's remedial U.S. History class, and was a sophomore, having failed the course, with another teacher, the year before. Ms. Merlo described herself as a C/D student. At the time of the allegations, Ms. Merlo received a C in the first marking period, and a D in the second marking period in Mr. Ludlow's class. Ms. Merlo testified that she knew Ms. Albritton before the incidents, but they were not friends. (T. 417-419; 1172-1173; AX 16)

According to Ms. Merlo, Ms. Albritton sat to the right side of her, in the second seat of the row. There were empty desks in front of both Ms. Merlo and Ms. Albritton. Ms. Merlo testified that the grievant brushed her breast while passing a paper back to her, while the grievant was standing behind her. She was unable to see what part of his hand brushed her breast. Ms. Merlo said it happened on more than one occasion, but she believed it was accidental, until she saw the grievant touch Ms. Albritton's breast. Ms. Merlo testified that the breast touching occurred more than two or three times a week, up to five times a week. According to Ms. Merlo, when she saw the grievant's hand on Ms. Albritton's breast, the girls made eye contact, and Ms. Albritton looked terrified. After class, Ms. Albritton asked Ms. Merlo if she had seen that, and Ms. Merlo replied that she did, and it had happened to her. Ms. Merlo and Ms. Albritton then went to see Ms. Graybill. (T. 423-429; 457)

Ms. Merlo also testified that the grievant sometimes leaned on her shoulders and would "rub, pat me on the back." She further alleged that he once hit her "in the butt with a rolled up piece of paper." Ms. Merlo testified that, on

one occasion, she leaned back in her chair to avoid the grievant's brushing against her breast. (T. 424-425)

After seeing Ms. Graybill, she told her father about the conduct. Ms. Merlo met later with Mr. Creeden, with Ms. Albritton and Ms. Albritton's mother. Ms. Merlo testified that she told Mr. Creeden that she just wanted the conduct to stop, without getting Mr. Ludlow fired, and she didn't want to get harassed from the students if they knew she complained. Ms. Merlo was not interviewed alone, and did not give a written statement on school property. Ms. Merlo prepared a typed statement on the computer that evening. (T. 432-437; SDX 8) In that statement, Ms. Merlo wrote that the conduct "started about one month ago," and that "things like this have happened five or six times before." (SDX 8)

According to Ms. Merlo, after her initial complaint, the grievant "kept his space more." Ms. Merlo testified that, as far as she could recall, the grievant did not touch her breast or rest his hands on her shoulders after October. Ms. Merlo testified that she was looking out for herself and Rebecca, and did not see the grievant touch Ms. Albritton again. (T. 438-440; 456-457)

Ms. Merlo testified that in December or January, the grievant told her at the end of class, "I know you've had a hard time lately, and if you ever need anybody to talk to, ever need a hug, ever need to punch somebody, you can come to me," that she was "very special." Ms. Merlo testified that the conversation made her feel awkward. (T. 441)

Ms. Merlo testified that in January, she was called down to Ms. Martin's office, the guidance counselor. Students Katie Schneider, Erin Kotchetovsky,



and Hollie Schwartz had put her name down on a slip requesting to speak to Ms. Martin. According to Ms. Merlo, Ms. Kotchetovsky had slipped her a note in detention, stating that they were going to see Ms. Martin about being touched by Mr. Ludlow, and they were putting her name down because they believed she was having similar problems. Ms. Merlo testified that she did not tell Ms. Kotchetovsky, or any other student besides Ms. Albritton, that she had been touched by Mr. Ludlow. Ms. Merlo testified that she went down to Ms. Martin's office when summoned, that she said she was not requesting to speak to her and the girls had put her name down, and she was sent back to class. (T. 442-445; 459)

In her trial testimony, Ms. Merlo stated that the grievant touched her breast, on average of five times a week, from September until December. Specifically, she testified that the touching started in September, stopped for a few weeks after it was reported in October, and started up again. (JX 5 at 91-93) She testified that she saw Mr. Ludlow "cup" Ms. Albritton's breast for "a second or two." (JX 5 at 79-80)

Ms. Merlo testified that the grievant discussed his father's bowel movements, which she found a "little strange." Ms. Merlo stated that the grievant told them he had an affair with his college professor, and that Betsy Ross was a prostitute who slept with different men. (T. 446-447)

Ms. Graybill did not take notes of her meetings with Ms. Albritton or Ms. Merlo. Ms. Graybill did prepare a written document, captioned "Options for Jenna and Rebecca" which provided for three options so that the girls did not

have to return to the Ludlow classroom. Option I indicated that the girls could take the same class at the same period in the Freshman house, which would necessitate that they leave lunch a little early, but notes that they would have the following class in the Lower House, which is the middle building. Ms. Graybill testified that this option was doable, and that other students, not freshmen, take classes in the Freshman Center. The two other options involved a transfer into another course or dropping the course for the semester. Ms. Graybill testified that she met with all three complainants, Ms. Albritton, Ms. Merlo, and Ms. Schneider, on a weekly basis from February on. Ms. Graybill also testified that she taught U.S. History, and due process was part of the curriculum. (T. 731-742; AX 9)

Four students testified who had been in the Albritton/Merlo class. Will Baker sat two seats behind Ms. Merlo and to the left of Ms. Albritton. Mr. Baker testified that he did not see the grievant touch the breasts of either Ms. Albritton or Ms. Merlo, or caress their shoulders, or lean over them so as to place his genitals on them, or touch them in any other inappropriate way. Mr. Baker testified that the grievant sometimes walked around the class as he taught, and he would place his hands on Mr. Baker's shoulders, as well as the shoulders of other students. Tanya Veneziale, who sat in the back of the class, Laura Mitchell, who sat next to Ms. Albritton and behind Ms. Merlo, and Nicholas Niedermayer, who sat to the right of Ms. Albritton, testified in a similar fashion as Mr. Baker. No witness saw either Ms. Albritton or Ms. Merlo flinch or pull back when the grievant was near them. (T. 954-1012)



The allegations of Katherine (Katie) Schneider

Katie Schneider was a 10<sup>th</sup> grader in Mr. Ludlow's American Cultures class. Ms. Schneider characterized herself as a good student. She received a C in the first marking period of the American Cultures course, and a D in the second. Ms. Schneider sat in the middle row, second seat. No one sat in front of her, and Erin Kotchetovsky normally sat behind her, although sometimes they traded seats so that they could "play with each other's hair." (T. 299-307; 1172-1173; AX 18)

Ms. Schneider testified that, beginning at the start of school, the grievant would rub her back and shoulders, and "lean down real close to me." Ms. Schneider testified that the grievant also would "brush his hands against my breast" when he would help her on a test, or come and ask her things. Ms. Schneider testified that she believed that the grievant rubbed the backs of other students, both girls and boys. She testified that, "every time he would have a chance, he'd touch my breast." Ms. Schneider testified that when the grievant touched her breast, she "froze up" and couldn't move. (T. 309-314; 318)

Ms. Schneider testified that, at first, she thought it was accidental, but as it kept going on she felt it was no longer an accident, and would make efforts to move away from him in her seat. Ms. Schneider did not ask to move from the center front seat, nor did she seek to be transferred out of the class. Ms. Schneider testified that she did not want to be found out as the person who came forward about him. (T. 311-312; 363-364; 371-372)

The first person with whom Ms. Schneider talked about the conduct was Erin Kotchetovsky, who, according to Ms. Schneider, confirmed to her that Mr. Ludlow touched her in the same fashion, as well. Ms. Schneider also talked to some of the boys in class, who, according to Ms. Schneider, said that they saw the grievant get close to Katie and Erin, but did not see him touch their breasts or anything. According to Ms. Schneider, the boys said they would snap their fingers when the grievant got close to them. She testified that they later did, on occasion. (T. 311-317)

Ms. Schneider testified that the grievant once kicked her knee when he was sitting in the desk in front of her, and he apologized and rubbed her leg a couple of times. Ms. Schneider testified that she felt the grievant's moustache one time when he came close to her to check her work. Ms. Schneider also described an incident when the grievant was passing back a paper over her, and she felt his genitals against her back. (T. 319-322)

Ms. Schneider testified about an incident in which she and student Susan Cosminski were performing a science experiment in the stairwell, when the grievant came up and massaged Ms. Schneider's shoulders and back. (T. 324-335) Susan Cosminski, who testified at the criminal trial, and whose testimony was taken for the truth based upon the stipulation of the parties, stated that the grievant came up behind Katie and asked them what they were doing. He then "put his hands on her shoulders and kind of a small massage and slid his hands down her back." Ms. Cosminski was not in Mr. Ludlow's class. (JX 5, 1/4/01 at 228)